to him by the defendant bank while he was on its board of directors and a member of its loan committee. He now sues the bank to recover the statutory penalty for usury. *Held*, that the plaintiff may recover whether or not he participated as director in the loan. *MacRackan* v. *Bank of Columbus*, 80 S. E. 184 (N. C.).

The policy of the usury statutes is such that the borrower in a usurious transaction, although a party to the wrong, is not *in pari delicto* with the lender. *Brown* v. *McIntosh*, 39 N. J. L. 22; *Horner* v. *Nitsch*, 103 Md. 498, 63 Atl. 1052. Accordingly, the borrower may ordinarily have affirmative relief on the contract, and enforce the statutory penalty for usury. *Scott* v. *Leary*, 34 Md. 389; *Bell* v. *Mulholland*, 90 Mo. App. 612; *Tayloe* v. *Parker*, 137 N. C. 418, 49 S. E. 921. This will be true although the debtor is a stockholder in the lending corporation. *Hollowell* v. *Southern Building & Loan Ass'n*, 120 N. C. 286, 26 S. E. 781. But when a director borrows from the corporation, the case is distinguishable because of the director's fiduciary duty to the corporate interests. See *Hill* v. *Frazier*, 22 Pa. 320, 324. It is clear that a borrower who controls the lender's action as its president or cashier will be unable to enforce the penalty. *Gund* v. *Ballard*, 73 Neb. 547, 103 N. W. 309; *Morris* v. *First National Bank of Samson*, 162 Ala. 301, 50 So. 137. A director should likewise be unable to recover, for the enforcement of such a hostile claim against the corporation would seem to be a clear breach of his fiduciary obligation. This should certainly be true in jurisdictions making a transaction between the corporation and a director, as to which he votes as director, always voidable by the corporation irrespective of its fairness. See *Munson* v. *Syracuse, etc. R. Co.*, 103 N. Y. 58, 8 N. E. 355. It should also follow in states upholding the transaction, unless unfair to the corporation, for a contract subjecting a corporation to a penalty at the suit of a director seems grossly unfair. See *Fort Payne Rolling Mill* v. *Hill*, 174 Mass. 224, 54 N. E. 532. In the principal case, however, the majority of the court insists that the language of the usury statute is too strong to admit such an exception, and this view finds much support. *Bank of Cadiz* v. *Slemmons*, 34 Oh. St. 142; *Buquo* v. *Bank of Erin*, 52 S. W. 775 (Tenn.). See NORTH CAROLINA, REVISAL OF 1905, § 1951. But it seems doubtful whether the statutes of usury should be so literally construed as to overrule the well-settled policy of the law which forbids a fiduciary to profit by the breach of his obligation.

WAREHOUSEMEN — WAREHOUSE RECEIPTS — UNAUTHORIZED SUBSTITUTION OF OTHER GOODS: RIGHTS OF PLEDGEE OF THE RECEIPTS AGAINST DEPOSITOR'S TRUSTEE IN BANKRUPTCY. — The depositor of timothy seed in a warehouse received open warehouse receipts, which he transferred to a bank as security for advances. Without authority from the bank, the depositor then substituted other seed of similar quantity and quality for that originally deposited. Later he became bankrupt, and his trustee in bankruptcy claims the substituted goods against the bank. *Held*, that the bank should prevail. *Chicago Title & Trust Co.* v. *National Storage Co.*, 103 N. E. 227 (Ill.).

If the holder of a warehouse receipt has assented to the substitution of other goods for those deposited, title to the substituted goods vests in him immediately. See WILLISTON, SALES, § 154; 6 AM. L. REV. 450, 467. *Cf.* *Bank of Newport* v. *Hirsch*, 59 Ark. 225, 27 S. W. 74. But when the substitution is unauthorized, the receipt holder may insist upon his original title and refuse to accept the new goods. See WILLISTON, SALES, § 442. His subsequent assent to the substitution, however, will be effective at least against the depositor and his representatives. *Brooks, Miller & Co.* v. *Western National Bank*, 16 Wkly. Notes Cas. (Pa.) 298; *Blydenstein* v. *New York Security & Trust Co.*, 67 Fed. 469. The authorities also generally agree with the principal case in sustaining the receipt holder's claim to the new goods against

the depositor's trustee in bankruptcy. See *Hoffman* v. *Schoyer*, 143 Ill. 598, 28 N. E. 823. The reasons assigned for this undoubtedly just result are various. Some courts find only an equitable lien, based upon estoppel. *Hoffman* v. *Schoyer*, *supra*. But the elements of estoppel appear to be lacking. See *Bryans* v. *Nix*, 4 M. & W. 775, 794. This theory, however, accounts for the dictum of the principal case that innocent purchasers of the new goods would prevail. By analogy to gifts delivered without the donee's knowledge, resort may also be had to the fiction of presumed assent, which would give the holder of the receipt actual title to the substituted goods, subject only to his own disclaimer. *Thompson* v. *Leach*, 2 Vent. 198, 3 Lev. 284; *Jones* v. *Swayze*, 42 N. J. L. 279. Upon this ground, the courts have sustained against third persons the claim of the holder of a bill of lading to goods subsequently shipped on account of the bill. *Lovell* v. *Newman*, 192 Fed. 753; *The Idaho*, 93 U. S. 575. See 25 HARV. L. REV. 555, 570. *Cf. Bryans* v. *Nix*, *supra*. Perhaps the best explanation of the result, however, is that the subsequent assent of the holder of the receipt relates back, and vests title in him from the time of the substitution. The fiction of relation, it is true, is not usually allowed to defeat intervening rights of third persons. *Bird* v. *Brown*, 4 Ex. 786; *Norton* v. *Alabama National Bank*, 102 Ala. 420, 14 So. 872. But where the transaction is so far completed that there has been an actual delivery of possession to a depositary, it seems not unjust to allow this relation back. *Grove* v. *Brien*, 8 How. (U. S.) 429. The creditors in the principal case have certainly not been injured by any possession in the debtor and should have no claim. And it is submitted that the dictum of the court that an innocent purchaser would prevail is unsound whether presumed assent or ratification be adopted as the ground of decision.

BOOK REVIEWS.

JUSTICE AND THE MODERN LAW. By Everett V. Abbot, 1913. Houghton, Mifflin and Company, pp. xiv, 299.

In the introduction (p. xiii) Mr. Abbot says: "The following pages are intended to help in the eternal conflict between established custom and justice. The first chapter is intended to exhibit the ultimate principles of justice as actually existent in the law, illustrated by cases in which they can be readily applied in the present, although they have never been so applied in the past. The second and third chapters are intended to exhibit something of the obstacles by which the progress of justice is impeded. They exhibit both the ignorance and the disingenuousness which enter into the administration of the law and which are still to be overcome. The last chapter is intended to suggest practical methods of avoiding error and detecting sophistries in the actual treatment of legal problems."

Justice is said to be (p. 3) "only the application of ethics to human affairs." The principles of ethics to be thus applied are three: the right of freedom, the duty to help, and "the reciprocating rights and duties of contract, which are, of course, solely defined by the terms of the contract itself." From this it will be seen that Mr. Abbot has not progressed much, if any, beyond the individualistic natural-right philosophy of the nineteenth century. The attempt to deduce a system of law from premises such as these has not been more successful in Mr. Abbot's case than in the cases of those who have preceded him.

Mr. Abbot's "natural right of freedom" leads him almost inevitably to the conclusion (p. 28) that inheritance taxes are unjustifiable and constitute a tak-